

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN MANUEL JUAREZ,

Petitioner,

v.

EASTERN DISTRICT OF CALIFORNIA,

Respondent.

No. 1:21-cv-01277-DAD-HBK (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS

(Doc. No. 3)

Petitioner Juan Manuel Juarez is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 27, 2021, the assigned magistrate judge issued findings and recommendations, recommending that the petition be dismissed because petitioner's claims "are [more] properly pursued via a civil rights complaint under 42 U.S.C. § 1983." (Doc. No. 3.) The pending findings and recommendations were served on petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days from the date of service. (*Id.* at 5.) Petitioner has not filed any objections and the time in which to do so has since passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the

1 magistrate judge's findings and recommendations are supported by the record and by proper
2 analysis.

3 In addition, having concluded that the pending petition must be dismissed, the court now
4 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of
5 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an
6 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
7 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds
8 without reaching the underlying constitutional claims, the court should issue a certificate of
9 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
10 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
11 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
12 In the present case, the court finds that reasonable jurists would not find the court's determination
13 that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to
14 proceed further. Therefore, the court declines to issue a certificate of appealability.

15 Accordingly,

- 16 1. The findings and recommendations issued on August 27, 2021 (Doc. No. 3) are
17 adopted in full;
- 18 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 19 3. The court declines to issue a certificate of appealability; and
- 20 4. The Clerk of the Court is directed to close this case.

21 IT IS SO ORDERED.

22 Dated: **October 28, 2021**

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25 UNITED STATES DISTRICT JUDGE
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